

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Criminal No. 16-cr-307 (SRN)

UNITED STATES OF AMERICA,

Plaintiff,

**JOINT MOTION FOR
RESENTENCING**

v.

ANTHONY MICHAEL NORTON,

Defendant.

Defendant Anthony Michael Norton has a pending motion under 28 U.S.C. § 2255 to vacate the enhancement of his sentence under the Armed Career Criminal Act (ACCA). (Doc. No. 82.) On motion by the government, the Court stayed his case pending Eighth Circuit decisions. (Doc. No. 86.) Because the Eighth Circuit has decided the case that controls, *United States v. Henry*, No. 22-1036, 2023 WL 3861791 (8th Cir. June 7, 2021) the parties jointly ask the Court to grant Norton's § 2255 motion, and resentence him without application of the ACCA.

In November 2016 a federal grand jury indicted Norton with one count of being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1). (Doc. No. 10.) The indictment alleged the defendant was subject to the enhanced sentencing penalties under the Armed Career Criminal Act ("ACCA"), 18 U.S.C. § 924(e). In January 2017, Norton pleaded guilty to the

count in the Indictment. At his sentencing in May 2017, the Court concluded that Norton was subject to the ACCA and accordingly imposed an enhanced sentence of 180 months' imprisonment. (Doc Nos. 47, 67.)

The Court found that Norton had three ACCA predicates: two felony assault convictions and one conviction for Fourth Degree Sale of a Controlled Substance (methamphetamine). (PSR at ¶¶42, 45, 52)

Norton's conviction for fourth-degree sale of a controlled substance is not an ACCA predicate because Minnesota defines the relevant substance more broadly than the federal government. *Henry*, 2023 WL 3861791 at *2. *Henry* held that Minnesota's definition of methamphetamine is broader than the federal definition. *Id.* *Henry* therefore controls and compels the conclusion that Norton's Fourth-Degree Sale conviction is not an ACCA predicate, which in turn means that Henry is not subject to the ACCA. The parties therefore agree¹ that this Court should lift the stay of Norton's pending § 2255 motion, grant that motion, vacate his sentence, and resentence him without the ACCA sentencing enhancement.

¹ Defense Counsel reviewed this filing and joins fully in the requested relief and in the basis for that relief.

Dated: 6/30/2023

Respectfully submitted,

ANDREW M. LUGER
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s/William C. Mattessich

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